IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2026 OF 1989

The Board of Trustees of the Port of Bombay, a body corporate constituted under the provisions of the Major Port Trust Act, 1963 as amended by the provisions of the Major Port Trust Amendment Act, 1974 and having their office at Vijay Deep, Shoorji Vallabhdas Marg, Ballard Estate, Bombay-400 038. ... Plaintiff.

V/s.

Brite International Pvt.Ltd., a Pvt. Ltd. Company incorporated under the Company's Act, 1956 and carrying on business at Embassy Centre, 6th floor, Office No.612A, Nariman Point, Bombay- 400 021. ... Defendant.

U.J.Makhija with M.Khandar i/b. Motiwalla & Co. for the plaintiff.

None for the defendants.

CORAM: V.C.DAGA, J.

DATED: 14th December 2007.

JUDGMENT :

. This suit is filed by the plaintiff to recover warehouse rental charges in respect of goods

imported by the defendants and stored in the plaintiff's warehouse in Mumbai. The charges which are being recovered are as per the scale of rates duly prescribed, under the byelaws framed, published and brought into force under the provisions of the Major Port Trusts Act, 1963.

2. The factual matrix reveal that the defendants had imported consignment, of 69 drums containing Nonyl Phenol Ethylene Oxide, out of which 66 drums were lying in the plaintiff's bonded warehouse at Wadala for more than one year. The defendants were called upon to remove the said drums vide notice dated 27th January, 1983. The defendants failed to remove the same. Failure on the part of the defendants led to disposal of the said consignment vide public auction. The sale proceeds received were adjusted against the port-trust charges, expenses of sale and customs duty, the details of which are given in the plaint. After adjusting the sale price, present suit is filed for the recovery of balance amount of port trust charges and customs duty, total amounting Rs.57,678.04 with further interest since the defendants failed to pay the said amount in spite of repeated demands.

3. On being summoned, the defendants failed to appear and respond to the writ of summons. They did not file their written statement. With the result, all the allegations made in the plaint and documents filed in support thereof went unchallenged.

4. The plaintiffs have filed affidavit in lieu of oral evidence duly affirmed by Shri Sanjay Sawant, Assistant Docks Manager, the authorised signatory of the plaintiff and produced documents in support of the suit claim. All these documents were proved through affidavit filed in lieu of evidence. Nobody appeared on behalf of the defendants to cross- examine the affiant or to challenge the legality or validity of the documents. Under these circumstances, since the defendants are *ex parte*, for want of challenge, the plaintiff would be entitled to decree as prayed in the suit.

5. In the above view of the matter, suit filed by the plaintiff deserves to be decreed in toto. Hence the following order:

ORDER

(i) The suit is decreed in terms of the prayer clauses incorporated in the plaint.

(ii) The defendants do pay Rs.57,678.04, with interest on Rs.57,465.50 the decretal amount i.e. suit claim calculated thereon from the date of suit till payment or part payment thereof at the rate of 12% per annum with costs.

(iii) Decree be drawn in terms of this order.

(V.C.DAGA, J.)